IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

TUESDAY, THE 20TH NOVEMBER 2007 / 29TH KARTHIKA 1929

WP(C).No. 419 of 2004(Y)

PETITIONER:

ERNAD GRANITES PRIVATE LIMITED,
REPRESENTED BY ITS MANAGING DIRECTOR,
SHOWKATHALI, U.K. PADI, VELLILA, MALAPPURAM DIST.

BY ADV. SRI.T.M.ABDUL LATHEEF

RESPONDENTS:

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1. STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT TAXES DEPT.
THIRUVANANTHAPURAM.

2. SALES TAX OFFICER,
DEPARTMENT OF COMMERCIAL TAXES,
GOVERNMENT OF KERALA, PERINTHALMANNA.

3. TAHSILDAR (REVENUE RECOVERY),
PERINTHALMANNA.

BY ADV. SHRI.PRADEEP, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 20/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) No. 419/2004

APPENDIX

PETITIONER'S EXHIBITS

P1 : COPY OF THE ORDER NO. C5.42334/00/CT DATED 13/12/2000 OF COMMISSIONER OF COMMERCIAL TAXES, THIRUVANANTHAPURAM.

P2 : COPY OF THE ORDER DATED 10/06/2003 OF THE 2ND RESPONDENT.

P3 : COPY OF THE NOTICE OF DEMAND IN FORM NO. 24 DATED 10/06/2003 ISSUED BY THE 2ND RESPONDENT.

P4 : COPY OF THE PROVISIONAL ASSESSMENT ORDER DATED 11/06/2003 ISSUED BY THE 2ND RESPONDENT.

P5 : COPY OF THE INSPECTION REPORT DATED 28/09/2002 ISSUED BY THE 2ND RESPONDENT.

// TRUE COPY //

PA TO JUDGE.

jg

C.N.RAMACHANDRAN NAIR, J.

WP(C) No. 419 of 2004

Dated, this the 20th day of November, 2007

J U D G M E N T

Petitioner is challenging demand of compounding fee charged, for the year 2003-04, under Section 7(1)(b) of the KGST Act for primary crusher. According to the petitioner compounding fee is payable only for secondary crushers. Petitioner has relied on Ext.P1 clarification issued by the Commissioner of Commercial Taxes. However, learned Government Pleader reported that primary crushers also attract compounding fee by virtue of amendment introduced by Finance Act 2001 w.e.f. 23/07/2001. This Court has upheld the amendment and the demand vide judgment in **Suma Devi** Vs. **State of Kerala**, reported in 2005 (2) KLT 870. In the circumstances, this writ petition is disposed of directing the 2nd respondent to compute liability and interest under compounding scheme in accordance with the amended provisions and the judgment above referred. If petitioner does not make payment in terms of demand, respondents are free to proceed with recovery.

(C.N.RAMACHANDRAN NAIR, JUDGE)

jg